

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोडपिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

(ITA No.76/RPR/2020)
(Assessment Year: 2015-16)

Income Tax Officer Ward-1(4), 1 st Floor, Aayakar Bhavan, Central Revenue Building, Civil Lines, Raipur (C.G.)	v s	M/s G.P. Infraventures, Shree Tower, Shankar Nagar, Raipur (C.G.)
		PAN: AANFG6074B
(अपीलार्थी /Applicant)	:	(प्रत्यर्थी / Respondent)

(ITA No.94/RPR/2020)
(Assessment Year: 2015-16)

M/s G.P. Infraventures, Shree Tower, Shankar Nagar, Raipur (C.G.)	v s	Income Tax Officer-1(4), Raipur
PAN: AANFG6074B		
(अपीलार्थी /Applicant)	:	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Sunil Kumar Agarwal, CA
राजस्व की ओर से /Revenue by	:	Smt. Ila M. Parmar, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	10.10.2023
घोषणा की तारीख / Date of 7Pronouncement	:	23.11.2023

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned cross appeals filed by the department and the assessee are directed against the order of Commission Income Tax (Appeal), Raipur, dated 09.03.2020 for the Assessment Year 2015-16, which in turn result from the order u/s 143(3) passed by the Income Tax Officer, ward-1(4), Raipur, C.G. dated 29.12.2017.

2. The Grounds of Appeal raised by **the department** in I.T.A. No. 76/RPR/2020 are as under:

Grounds of Appeal

1. Whether on the facts and circumstances of the case, the Id. CIT(A) was justified in deleting the addition of Rs. 1,42,85,000/- by way of disallowance u/s 40A (3) of the IT Act on account of amount paid towards purchase of land which is stock-in trade of the assessee and claimed as expenditure even though the assessee is engaged in the business of trading of land and therefore the provisions of section 40A (3) is clearly attracted?
2. Whether on the facts and circumstances of the case, the Id. CIT(A) was justified in deleting the addition of Rs. 1,42,85,000/- by way of disallowance u/s 40A(3) of the IT Act on account of amount paid towards purchase of land which is stock-in trade of the assessee and claimed as expenditure since the Id. CIT(A) has completely ignored the fact that no exemption provision is applicable as envisaged in Rule 6DD and the same has not challenged by the assessee or in the order of the Ld. CIT(A)?
3. "Whether on the facts and circumstances of the case, the Id. CIT(A) was justified in deleting the addition of Rs. 1,42,85,000/- by way of disallowance u/s 40A (3) of the IT Act on account of amount paid towards purchase of land which is stock-in trade of the assessee and claimed as expenditure as the assessee had not brought anything before the Assessing officer which showed that the cash payments were made out of business expediency?
4. "Whether on the facts and circumstances of the case, the Id. CIT(A) was justified in deleting the addition of Rs. Rs. 1,66,50,000/- out of total addition of Rs. 1,73,00,000/- them on account of unexplained cash credits u/s.68 of the IT Act. since the assessee has not brought any proof/ details of land before the Ld. CIT(A)/AO to show that the advances made against land has been executed into sale deed and that land has been sold to them?

5. "Whether on the facts and circumstances of the case, the Id. CIT(A) was justified in deleting the addition of Rs. Rs. 1,66,50,000/- out of total addition of Rs. 1,73,00,000/- them on account of unexplained cash credits u/s.68 of the IT Act merely on the basis of an affidavit given by one of the persons who has advanced an amount of Rs. 25 lakhs to the assessee?
 6. "Whether on the facts and circumstances of the case, the Id. CIT(A) was justified in deleting the addition of Rs. Rs. 18,05,000/- credited in the bank account on account of unexplained cash credits thereby completely ignoring the fact that there is no mention of the said bank a/c (Gramin Bank-77015098113) either in the return of income or in the Audit report filed by the assessee?
 7. "Whether on the facts and circumstances of the case, the Id. CIT(A) was justified in deleting the addition of Rs. Rs. 18,05,000/- credited in the bank account on account of unexplained cash credits thereby completely ignoring the fact that there is no mention of the said bank a/c (Gramin Bank-77015098113) in the balance sheet also which proves that the amount of Rs.18,05,000/- has been routed out of the books of accounts?
 8. The order of Ld. CIT (A) is erroneous both in law and on facts.
 9. Any other ground that may be adduced at the time of hearing.
3. The Grounds of Appeal raised by **the assessee** in its Appeal in I.T.A. No. 94/RPR/2020 are as under:
1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the addition Rs.6,50,000/- on the count of unexplained cash credit u/s 68, the alleged addition is unjustified and is liable to be deleted.
 4. In the course of appellate proceedings before us, Ld. AR of the assessee has submitted an application for raising additional grounds of appeal, which in view of settled principle of law as laid down by Hon'ble

Apex Court in the case of 'National Thermal Power Corporation Limited' (N.T.P.C.), reported in [1998] 229 ITR 383, are allowed to be admitted. The additional grounds raised by Ld. AR on behalf of the assessee are culled out as under:

1.1 The assessee-firm wants to raise 'additional ground' of appeal, which is given as under, may kindly be admitted & taken on record for your kind consideration & adjudication on the matter:

Additional Gr.No.1:

"1. On the facts and circumstances of the case and in law, return has filed u/s139(1) with ITO-1(4); notice u/s143(2) issued by ITO-1(1) who was not having authority of law to issue such notice u/s143(2) as per sec2(7A), sec124(1) rws.120(2)&(3); no notice u/s143(2) issued by ITO-1(4) who passed order u/s143(3); in absence of a valid notice issued u/s143(2) by ITO-1(4) who was the 'Assessing Officer' as per sec2(7A), sec124(1) rws.120(2)&(3), assessment made u/s143(3) by ITO-1 (4) would be invalid as without assuming valid jurisdiction for making assessment u/s143(3), is liable to be quashed."

Additional Gr.No.2:

"2. On the facts and circumstances of the case and in law, return has filed u/s139(1) with ITO-1(4) who was the 'Assessing Officer' as per sec2(7A), 124(1) rws.120(2)& (3); there is violation of sec143(2) as notice u/s143(2) can only be issued by the 'Assessing Officer' as mentioned in the sec143(2) itself as "the Assessing Officer shall serve on the assessee a notice"; in absence of a valid notice issued by the 'Assessing Officer' u/s143(2) as mandated by law u/s143(2) itself, sec124(3)(a) does not come into play, assessment made u/s143(3) by ITO-1(4) would be invalid as without having valid jurisdiction for making assessment u/s143(3), is liable to be quashed."

Additional Gr.No.3:

"3. On the facts and circumstances of the case and in law, assessment made u/s143(3) by ITO-1(4) is invalid; it is in violation of sec127(1) & sec127(3); notice u/s143(2) issued by ITO-1(1); there is no order u/s127 by the PCIT for transferring the 'case' from ITO-1(1) to ITO-1(4); in absence of order passed u/s127 by PCIT, assessment made u/s143(3) by

ITO-I (4) would be invalid as without having valid jurisdiction for making assessment u/s143(3), is liable to be quashed."

Additional Gr.No.4:

"4. On the facts and circumstances of the case and in law, Id AO has erred in making addition of Rs.1,42,85,000 u/s40A(3) on being cash payment made for purchase of 'land', when it was not the issue of 'limited scrutiny' assessment under CASS; it is in violation of CBDT Instruction No.7/2014; No.20/2015; No.5 of 2016; Id AO cannot go beyond the issues mentioned in the reasons for selection of 'limited scrutiny' assessment under CASS; Id AO is barred from looking into unconnected/ independent issue(s) other than those mentioned in the reasons for 'limited scrutiny' selection; in absence of prior approval of PCIT as per CBDT Instruction No.7/2014 & No.20/2015; without assuming valid jurisdiction by the Id AO, impugned addition is unjustified and is liable to be deleted."

Additional Gr.No.5:

"5. On the facts and circumstances of the case and in law, Id AO has erred in making addition of Rs.1,73,00,000, on unexplained cash credits u/s68, when it was not the issue of 'limited scrutiny' assessment under CASS; it is in violation of CBDT Instruction No. 7/2014; No.20/2015; No.5 of 2016; Id AO cannot go beyond the issues mentioned in the reasons for selection of 'limited scrutiny' assessment under CASS; Id AO is barred from looking into unconnected/ independent issue(s) other than those mentioned in the reasons for 'limited scrutiny' selection; in absence of prior approval of PCIT as per CBDT Instruction No. 7/2014 & No.20/2015; without assuming valid jurisdiction by the Id AO, impugned addition is unjustified and is liable to be deleted."

Additional Gr.No.6:

"6. On the facts and circumstances of the case and in law, Id AO has erred in making addition of Rs.18,05,000, on credits in undisclosed bank account, when it was not the issue of 'limited scrutiny' assessment under CASS; it is in violation of CBDT Instruction No.7/2014; No.20/2015; No.5 of 2016; Id AO cannot go beyond the issues mentioned in the reasons for selection of 'limited scrutiny' assessment under CASS; Id AO is barred from looking into unconnected/ independent issue(s) other than those mentioned in the reasons for 'limited scrutiny' selection; in absence of prior approval of PCIT as per CBDT Instruction No.7/2014 & No.20/2015; without assuming valid jurisdiction by the Id AO, impugned addition is unjustified and is liable to be deleted."

The above 'additional grounds' of appeal are legal in nature raised before your Honor's Bench first time which goes to the root of the matter and the assessee is entitled to urge legal issue(s) on the basis of facts already available on record which though not arose before the Id AO & the Id CIT(A), relied on NTPC Ltd (1998) (SC).

5. Since, the present cross appeals are against the same order of Ld. CIT Appeal involving same facts and issues, therefore, these two appeals are heard together, and are disposed off this common order.

6. First, we are adverting to the additional legal grounds raised by the Ld. AR.



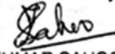
6.1 **Additional ground no. 1, 2 and 3:** By raising these three additional grounds, Ld. AR of the assessee has assailed the controversy challenging the assumption of jurisdiction by the Ld. AO in competing the assessment proceedings u/s 143(3) on the basis of following contentions:

- (i) That the return of income was filed by the assessee u/s 139(1) with ITO ward - 1(4), but notice u/s 143(2) was issued by ITO ward -1(1), who was not having valid authority of law i.e., lawful jurisdiction to issue a notice as per provisions of section 2(7A) / Sec. 124(1) r.w.s. 120(2) & (3). It is submitted that no notice u/s 143(2) has been issued by the jurisdictional AO i.e., by ITO ward -1(4), who finally has passed the order u/s 143(3). In absence of a valid notice issued u/s 143(2) by the ITO ward - 1(4), who was the Assessing Officer within the meaning of provisions of section 2(7A) r.w.s. 124(1), 120(2) & (3). Under such circumstances, assessment framed u/s 143(3) by ITO ward -1(4) would be invalid

as without assuming valid jurisdiction for making assessment u/s 143(3), is liable to be quashed.

- (ii) In continuation, Id. AR had emphasized that in absence of valid notice issued by the AO u/s 143(2) which is mandatory and pre-requisite of framing an assessment u/s 143(3), the order passed is, thus, liable to be held as invalid qualifies to be set aside.
- (iii) Other contentions raised by the Ld. AR was that the assessment framed u/s 143(3) by ITO ward 1(4) is invalid as the same was in violation of provisions of section 127(1) & (3). In the present case, the notice u/s 143(2) was issued by ITO ward-1(1) and subsequently the case was transferred to the jurisdictional AO i.e., ITO ward-1(4), who has not issued any notice u/s 143(2). The change of incumbent was without issuing of the mandatory order u/s 127 by the Pr. Commissioner of Income Tax for transferring the case from ITO ward -1(1) to ITO ward-1(4). In absence of an order u/s 127, the assumption of jurisdiction by the Assessing Officer, i.e., ITO, ward 1(4), who has framed the assessment, is as good as no jurisdiction, thus the order passed by such an officer who is bereft of valid jurisdiction, is equal to an illegal order, invalid in the eyes of law, consequently, the same is liable to be quashed.

7. On the issue of change of incumbent which is evident from the assessment order also that the case was first taken up by ITO ward -1(1), Raipur, who has issued the first notice u/s 143(2) on 30.07.2016 copy of the same is extracted as under:

 GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE INCOME TAX OFFICER WARD 1(1), RAIPUR			
To, G.P INFRAVENTURES 13/449 13/449 ,narmada para behind radha krishna mandir, station chowk 492001 ,Chhattisgarh India			
PAN: AANFG6074B	AY: 2015-16	Notice No : ITBA/AST/S/143(2)/2016-17/1000250824(1)	Dated: 30/07/2016
Notice under section 143(2) of the Income Tax Act, 1961 Complete Scrutiny			
Sir/ Madam/ M/s, This is for your kind information that the return of income for Assessment Year 2015-16 filed vide ack. no. 870874531291015 on 28/10/2015 has been selected for Complete Scrutiny. 2. In view of the above, we would like to give you an opportunity to produce, or cause to be produced, any evidence which you feel is necessary in support of the said return of income on 08/09/2016 at 12:40 PM in the office of the undersigned. 3. Sending a communication to the undersigned in this regard shall also be treated as sufficient compliance in case no evidence is sought to be produced as required in Para 2 above. 4. Specific questionnaire/ show-cause notice shall be sent giving you another opportunity in case any adverse view is contemplated. 5. (#) The assessment proceeding in your case is proposed to be conducted through email based communication. The email provided in the said return of income shall be used for communication for this purpose. In case you wish to communicate through any other alternate email, the same may kindly be informed. A brief note regarding benefits of this facility and procedure is enclosed overleaf. In case you do not wish to participate in this taxpayer friendly initiative, you may convey your refusal to the undersigned by the above mentioned date. In case, you wish to opt out from this scheme at any subsequent stage due to any technical difficulties faced by you, the same can be done with prior intimation to the undersigned. (#) applicable only in case of taxpayers whose Income-tax jurisdiction falls in the cities of Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata or Mumbai			
		Yours faithfully,  JITEN KUMAR SAHOO WARD 1(1), RAIPUR	
, RAI02, RAI03, RAI04, RAIPUR, Chhattisgarh, 492001			

8. The aforesaid notice has been placed before us by the Ld. AR which in turn has been confronted to the Ld. CIT DR, representing the case on behalf of the department, with a request to verify the same from the case records and confirm that, whether an order u/s 127 was issued by the Ld. PCIT in the present case or not to effect the change of incumbent. In response Ld. CIT DR furnished before us the assessment records, as well as a report dated 28.06.2023 by the ITO ward -1(1), on perusal of the said report of ITO, it is apparent that no notice u/s 127 was issued in the present case. For completeness of the facts, the report of the AO dated 28.06.2023, submitted before us is extracted as under:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)
OFFICE OF THE INCOME TAX OFFICER - 1(1)
AAYKAR BHAWAN, CIVIL LINES, RAIPUR - 492001

F.No. ITO-1(1)/RPR/ITAT/G.P. Infra/2023-24

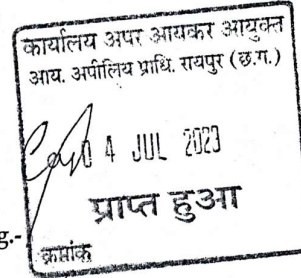
Dated: 28.06.2023

To

The Joint Commissioner of Income Tax (ITAT),
B & C Wing, 5th Floor, Central Secretariat Building,
Sector-24, Atal Nagar, Naya Raipur
Raipur

Sir,

Sub:-Production of case records with clarification -reg.-



Kindly refer to your letter F.No. JCIT-ITAT/RPR/REQ/2023-24 dated 07.06.2023 on the subject above.

2. In this regard, it is submitted that case records of G.P. Infraventures, Raipur for the A.Y. 2015-16 is produced herewith for further necessary action. The folder contains total no. of 669 pages of documents and 05 pages of order sheet which details as under:-

S.No	Description	Pages
1.	Notice u/s 143(2) of IT Act dated 30.07.2016 issued by ITO-1(1), Raipur for A.Y. 2015-16 in the case of G.P. Infraventures, Raipur.	01 to 03
2.	Print of screen shot of reason for selection of case under the scrutiny	04
3.	Copy of return of income for A.Y. 2015-16	05 to 37
4.	Intimation u/s 129 of the Act	38
5.	Notice u/s 142(1) of IT Act dated 13.07.2017 issued by ITO-1(4), Raipur for A.Y. 2015-16 in the case of G.P. Infraventures, Raipur.	39
6.	Submissions filed by the assessee dated 16.10.2017 in connection with assessment proceeding along with enclosures for A.Y.-2015-16 in the case of G.P. Infraventures, Raipur.	40 to 94
7.	Summons issued to various parties in the case of the assessee	95-98
8.	Notice u/s 133(6) issued to M/s Avinash Builders in the case of the assessee	99
9.	Rough Sheet	100
10.	Returned notice u/s 133(6) of the Act having addressee name as Anil Rohra	101-103
11.	Notice u/s 142(1) of the Act dated 06.11.2017 issued to G.P. Infraventures	104
12.	Document receipt memo of Tarwani & associates	105

13.	Statement of Shri Muktanand	106-107
14.	Opportunity of being heard given to assessee for furnishing reply	108
15.	Acknowledgment receipt of Phool Kumari Sahu	109
16.	Submissions filed by the assessee dated 30.11.2017 in connection with assessment proceeding along with enclosures for A.Y.-2015-16 in the case of G.P. Infraventures, Raipur.	110 to 170
17.	Summons issued to parties	171-173
18.	Notings	174-178
19.	Submission made by Shri Krishna Kumar Sen alongwith enclosures	179-202
20.	Statement of Shri Surendra Singh Dhruv	203-208
21.	Statement of Shri Tukeshwar Kumar Sen	209-213
22.	Statement of Shri Govardhan Tondon along with enclosures	214-224
23.	Notice sent to G.P. Infraventures requiring to furnish certain detail	225
24.	Copy of deed furnished by Registrar office	226-265
25.	Submissions filed by the assessee dated 23.12.2017 in connection with assessment proceeding along with enclosures for A.Y.-2015-16 in the case of G.P. Infraventures, Raipur.	266-492
26.	Notings	493-550
27.	Assessment order of the assessee dated 29-12-2017 alongwith demand notice and computation and penalty notice u/s 271(1)(c)	551-580
28.	Reply of assessee regarding penalty notice issued	581-583
29.	Information furnished by assessee regarding filing of appeal	584-617
30.	Copy of order of Id. CIT(A) dated 09.03.2020	618-627
31.	Notice u/s 221 of the Act	628
32.	Application of the assessee for stay of demand	629-631
33.	Reply of the assessee to notice u/s 221 of the Act	632-636
34.	Notice u/s 226(3) of the Act to Banks	637-639
35.	Letter of AO to CIT(A) regarding submission of case record	640
36.	Letter of Pr.CIT-1, Raipur calling for scrutiny report	641
37.	Order of giving effect to CIT(A) order	642-645
38.	Submission of scrutiny report	646-652
39.	Rectification application of assessee	653-662
40.	Form -36	663-666
41.	Letter to JCIT(ITAT) dated 26.05.2023 for production of case record	667
42.	Letter by JCIT(ITAT) dated 07.06.2023 for production of case record	668-669

2. *In respect of validity of assessment order passed by the ITO-I (4), Raipur on the ground of jurisdiction, it is submitted that notice u/ s 143(2) of the Act was issued by the ITO-1(1), Raipur on 30.07.2016. Later on the case was transferred to ITO-1(4), Raipur and intimation u/ s 129 of the Income Tax Act, 1961 was issued to the assessee. Accordingly, the case was proceeded from the stage at which the case was received by the ITO-1(4), Raipur as per provision of section u/ s 129 of the Act. For sake of convenience, the said section is reproduced below:*

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Section: 129 Whenever in respect of any proceeding under this Act an income-tax has and exercises jurisdiction, the income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by the predecessor:

Provided that the assessee concerned may demand that before the proceeding is so continue the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against, he be reheard,

In the present case, the intimation u/ s 129 of the Act was issued and the assessee has not demanded for previous proceeding (i.e. issuance of notice u/ s 143(2) of the Act) during the assessment proceeding. Therefore, the assessment proceeding was continued from the stage at which the proceeding was transferred by the ITO-I (1), Raipur.

3. *In respect of clarification on what basis the case of the assessee has been transferred from ITO-1(1), Raipur and ITO-I (4) assumed the jurisdiction and subsequently passed the order, it is submitted that the address of the assessee as per ITR for A.Y. 2015-16 is 13/449, Narmada Para, Behind Radha Krishna Mandir, Station Chowk, Raipur and this address was under the jurisdiction of the then ITO-I (4) as the assessee fall under the category "Firm" the income/ loss of which for last three preceding years is less than 15 lacs. Therefore, the jurisdiction of the assessee lies with ITO-1(4), Raipur and the assessment order was passed by ITO-1(4), Raipur after assuming the jurisdiction over the assessee.*

4. *As per material available on record, the assessee has not raised objection over the jurisdiction before AO within one month of from the date of service of notice dated 30.07.2016, therefore, the assessee is not entitled to raise objection over the jurisdiction of the AO as per provision of section 124(3) of the Act. For sake of convenience, the said section is reproduced below: -*

"Section: 124(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer- (a) where he has made a return under sub- section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub- section (1) of section 142 or subsection (2) of section 143 or after the completion of the assessment, whichever is earlier"

In view of the above fact, the assessee has no right to call in question on the jurisdiction of the AO passing the assessment order.

5. *In case of any change in the jurisdiction of AO or for desired change in AO's jurisdiction, he has to request jurisdictional Pr. CIT an application under section 127 for transfer from one assessing officer to other in view of his convenience. Merely change in PAN data base or filing of ITR other than the jurisdictional Assessing Officer is not sufficient to justify his claim of self-assumed territorial jurisdiction. The AO as well as the assessee has no legal rights for change of jurisdiction of the cases unless it is convenient to tax administration or convenient to the assessee also. If both the tax administrator and assessee are comfortable with the jurisdiction, the notice issued and served is valid in view of principle of natural justice.*

6. *Further, the jurisdiction can be conferred only by notification u/ s 120(1) and 120(2) of the Act only and said section mandates also to furnish correct jurisdiction of the assessee while filing his ITR. The PAN or any transfer of the ITR address is valid only when, on request of the assessee, the competent authority transfer the case from one jurisdiction to another and consequently, jurisdiction over the case is also transferred. The assessee has rights to change his PAN address but as it concerns with the change of AO, he has to furnish his request for change of jurisdiction of the AO in writing. In absence of the same, the AO holding the jurisdiction at the time of issuance of notice will be the AO for the purpose of issuance of notice and other proceedings.*

7. *It is important to mention here that the assessee is well informed for the jurisdictional assessing officer of his case as he is filing his ITR for the A.Y. 2015-16. Further, he attended assessment proceedings through the authorized representative. The authorized representatives are very experienced and have thorough knowledge of income tax law and procedure. He is well aware of the jurisdiction over the case and remedial action for correction and rectification of jurisdictional issue. During the entire assessment proceedings, the assessee as well as the learned counsel has also not objected the validity of the notice and assessment proceedings in the case for the reasons best known to them. The Act has protected the liberty of choosing his jurisdiction or furnish objection on jurisdictional issues under section 124 of the Act. The assessee was having sufficient opportunities and time to object validity of proceedings and issuance of statutory notices. Therefore, objection on jurisdictional issue furnished after completion of assessment proceedings and at second appeal stage cannot be said out of omission or ignorance of law and procedure and it is clearly afterthought of the assessee.*

8. *In the present, the case the assessment proceeding u/s 143(3) was completed as on 29.12.2017. The assessee had neither challenged the jurisdiction before AO during the assessment proceeding nor before Id. CIT(A) during appellate proceedings. Thus, it is evident that the assessee has challenged the jurisdiction only in order to escape from tax liability arising from assessment proceeding. Further, the provisions of Section 124(3) are very clear. Where the appellant is of the view that the jurisdiction is not justifiable, the appellant is free to challenge the same before the AO or under writ or seek any further legal remedy. But where the appellant does not exercise such an option, it cannot be questioned later on. The same observation was made by the Hon'ble High Court of Delhi in the case of *Abhishek Jain vs Income Tax Officer, Ward - 55(1), New Delhi (WRIT PETITION (CIVIL) No. 11844/2016)* that "As far as territorial or pecuniary jurisdictions are concerned, objection should be taken at the earliest possible opportunity and / or before the settlement of issues and not at the subsequent stage. Jurisdiction as to the subject matter is distinct and stands on a different footing." Thus, the ground of the assessee regarding jurisdiction at this junction are infructuous and liable to be dismissed.*

9. *The issue of jurisdiction was also considered by the various appellate courts in various cases which are discussed as under: -*

9.1 *In the case of Hindustan Transport Co vs IAC, 189 ITR 326 (Allahabad), the Hon'ble HC dealt extensively with the various provisions of the Act and held that the allocation of jurisdiction is a measure of administrative convenience. In such a situation, the concept of jurisdiction cannot be imported and, certainly, not in the sense of invalidating the resultant action on account of the defect in the exercise of functions. The Legislature did not intend collection of revenue to be bogged down on account of technical plea of jurisdiction. It has, therefore, prescribed the limit up to which the plea of jurisdiction may be raised. As provided in section 124(5)(a), the right is lost as soon as the assessment has been completed. Even where the right is exercised before the assessment is completed, the question is to be decided by the Commissioner or by the Board. Courts do not come into the picture.*

9.2 *In the case of CIT vs Siri Paul Oswal, [2007] 293 ITR 273 (Punjab & Haryana), it was held by Hon'ble HC that a distinction has to be made between a situation when there is inherent lack of jurisdiction and a situation where jurisdiction is irregularly assumed and plea of want of jurisdiction can be waived by a party. In the later situation, the question arises whether party who could waive the plea of jurisdiction, raised such a plea and whether such a party had been prejudiced on account of erroneous assumption of jurisdiction. The present case, the assessee participated in assessment proceedings by the Assessing Officer to whom assessment proceedings under the Income-tax Act were transferred and who exercised jurisdiction to assess wealth-tax also with the participation of the assessee without any objection by the assessee. If the assessee had raised an objection, the proceedings could have been transferred back to the concerned Wealth-tax Officer. The Assessing Officer having proceeded further, and assessment having been finalized, plea of lack of jurisdiction could not be raised for the first time in appeal, without showing error in the order on the merit and without showing any prejudice to the assessee by exercise of jurisdiction by the Assessing Officer."*

9.3 *In Mantoo Sarkar v. Oriental Insurance Co. Ltd.* [2009] 2 SCC 244, the apex court in relation to the question of jurisdiction of the Tribunal under the Motor Vehicles Act has made the observation that **"A distinction, however, must be made between a jurisdiction with regard to the subject-matter of the suit and that of territorial and pecuniary jurisdiction. Whereas in the case falling within the former category the judgment would be a nullity, in the latter it would not be."**

9.4 *In the case of Kiran Singh v. Chaman Paswan*, AIR 1954 SC 340, wherein a distinction has been drawn between a jurisdiction with regard to the subject matter of the suit and that of territorial and pecuniary jurisdiction. **It has been held that a decree or judgment passed by a court having no territorial or pecuniary jurisdiction is not a nullity but at the most it is an irregularity, and such a judgment and decree cannot be set aside by higher court while exercising appellate or revisional jurisdiction unless a prejudice which has been caused to the appellant is established.**

9.5 *In the case of CIT vs. All India Children Care & Educational Development Society*, [2013] 357 ITR 134 (Allahabad), the Hon'ble Allahabad HC has held that Tribunal is not a competent authority to adjudicate upon jurisdiction of Assessing Officer when it is not raised before Assessing Authority. Such a decision has been arrived at after looking at various judicial precedents and provisions of law including S. 124. Similar view had been held in various judicial decisions including (i) *Subhash Chander v. CIT* [2008] 166 Taxman 307, P&H HC, (ii) 25 taxmann.com 464 (Jodhpur ITAT), *Vaishali Builders & Colonizers vs Addl. CIT* [2012], (iii) *ACIT vs Punjab Urban Development Authority, Mohali*, [2014] 42 taxmann.com 160 (Chandigarh - Trib.) and various other decisions.

9.6 *On the contrary, the case of CIT vs SS Ahluwalia*, [2014] 46 taxmann.com 169 (Delhi), is more appropriate and relevant. In this case, the Hon'ble Delhi HC has laid down several propositions including (i) Sections 120, 124 and 127 recognize flexibility and choice, both with the assessee and the authorities i.e., the Assessing Officer before whom return of income could

*be filed and assessment could be made. The Assessing Officer within whose area an assessee was carrying on business, resided or otherwise income had accrued or arisen, has jurisdiction. Similarly, the Assessing Officer also has authority due to class of income or nature and type of business. The Act, therefore, recognized multiple or concurrent jurisdictions. (ii) **Provisions of section 124 ensure and prevent two assessments by different assessing officers, having or enforcing concurrent jurisdiction.** There cannot be and the Act does not envisage two assessments for the same year by different officers. (Reassessment order can be by a different officer). (iii) Each year is separate and distinct year and in case the assessee shifts his residence or place of business or work etc. Assessing Officer of place where the assessee has shifted or otherwise, will have jurisdiction and **it is not necessary that an order under section 127 should be passed. This, however, does not mean that the Assessing Officer where the returns of income were earlier filed ceases to have jurisdiction, provided the assessee has residence in his area, place of business, class, income etc. Residence can mean permanent residence as well as current or temporary residence of some permanence.** (iv) The question of jurisdiction or the place of filing has to be examined each year with reference to provisions of section 124. Section 124 provides flexibility and postulates multiple and concurrent jurisdiction including filing of return and where the assessee has permanent or current residence or where he has sole/ only source of income. (v) An assessment order passed without making reference to Commissioner/ Commissioners under section 124 is not a nullity for want of jurisdiction but it results in irregularity which can be rectified by order of remit and directing the Assessing Officer to continue with the proceedings from the stage where the error had occurred.*

10. *In the present case, the assessee has not challenged the issue of jurisdiction before the AO and before Id. CIT(A). Even the assessee was having sufficient opportunity during assessment proceeding as well as during the appellate proceeding. Thus, it clearly indicates that the assessee had not come with clean hands for raising an additional issue of challenging jurisdiction before the Hon'ble ITAT. Even through, if the jurisdiction over the assessee does not lie of the AO passing the assessment order, the same should be disclosed before the AO before completion of assessment order. Thus, the assessee has suppressed the fact before the AO as well*

as before CIT(A). It indicates that the assessee has not approached to the Hon'ble ITAT on the issue of jurisdiction over the case with clean mind, clean heart and clean objective therefore, this ground is liable to be dismissed in limine. The Hon'ble High Court of Karnataka in the case of Ratnachudamani s. Utal Vs. Income Tax Officer (2004) 269 ITR 272 dismissed the writ as the petitioner had not approached the Court with clean hands and held that the petitioner has intentionally and deliberately suppressed the material facts. If the petitioner wants any relief at the hands of this court, he has to approach the court with clean hands and it is duty cast on the petitioner to state the true facts and make out a case. Similarly, the Indore Bench of the Madhya Pradesh High Court in the case of Ajit Kumar Pitaliya v. Income Tax Officer (2008) 318 ITR 0182 dismissed the appeal of the assessee in limine for failure to come with clean hands and held that he must come to the court with clean hands. The Doctrine of Clean Hands is not only applicable to the High Court and Apex Court but also before other courts and judicial forum. The Hon'ble Apex Court in the case of Ramjas Foundation v. Union of India & others in Civil Appeal No. 6662 of 2004 removed the misconception that these principles (Doctrine of Clean Hands) are only applicable to Writs & SLPs before the Apex Court and High Courts. The Phrase "but also to the cases instituted in others courts and judicial forums" This judgment lays down the principle that it is obligatory for a petitioner/ appellant/ applicant to approach any court or judicial forum with clean hands or face the ire of the courts/ judicial forums who will not hesitate in applying the doctrine of clean hands and rejecting his appeal/ revision.

11. Therefore, in view of the facts noted above, the objection raised by the assessee on the issue of jurisdiction is not maintainable and liable to be rejected.

Submitted.

Encl. Case Record (01 Vol.)

*Income Tax Officer-1(1),
Raipur*

Copy for kind information to The Addl. Commissioner of Income Tax, Range-I, Raipur

9. Based on aforesaid report of the ITO, W-1(1), Ld. CIT DR submitted that the assumption of jurisdiction by the ITO ward 1(4) was very much in compliance of the provisions of the Act and, therefore, the ITO, W-1(4) cannot be treated as non-jurisdictional AO, leading to qualify the assessment framed u/s 143(3) as invalid.

10. We have considered the rival contentions, perused the material available on record and case laws relied upon by the parties. Admittedly, in the present case a notice u/s 143(2) were issued by ITO ward 1(1) who is not having a valid jurisdiction in the case of assessee, however, subsequently the case was transferred to ITO ward 1(4), who is the jurisdictional AO for the assessee. It is further noticed that for change of incumbent no order u/s 127 was issued by the Ld. PCIT having jurisdiction over such officers and the assessee's case. From the report of the ITO ward 1(1) regarding issuance of order u/s 127, mentioning that "*it is not necessary an order u/s 127 should be passed. Thus, does not mean that the Assessing Officer whether the return of income were earlier filed seized to have jurisdiction, provided the assessee has residence in his area place of business, class, income etc. residence can mean permanent residence as well as current or temporary residence of some permanence*", such explanations by the Ld. AO itself proves that no order u/s 127 was issued by Ld. Principal Commissioner of Income Tax (PCIT).

11. To understand the requirement of issuance of order u/s 127, the provisions of section 127(1) of the I.T. Act are extracted as under:

Sec 127: *The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.*

(1) *Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, —*

(a) *where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order.*

(b) *where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorize in this behalf.*

(2) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality, or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

12. According to aforesaid provisions of section 127, it is explicitly clear that in a case where the assessment proceedings are initiated by an Assessing Officer and the same are later on transferred to another Assessing Officer then according to section 127(4) an order u/s 127(1) & (2), irrespective of with or without concurrent jurisdiction, has to be issued at any stage of the proceedings, and shall not render necessary the reissue of any notice already issued by the Assessing Officers from whom the case is transferred.

13. A similar issue has been dealt by the coordinate bench of IT, Raipur in the case of Dr. Hari Singh Chandel Vs. ITO (2022) 220 TTJ 839/ (2023) 221 DTR 338, Wherein IT, Raipur as held as under:

23. *On a specific query by the Bench as to on what basis the jurisdiction over the case of the assessee was vested with the ITO, Ward-1(2), Jabalpur, the learned Departmental Representative could not give any plausible answer. Only contention of the learned Departmental Representative was that the case of the assessee was allocated to the ITO, Ward-1(2), Jabalpur on the basis of PAN jurisdiction. However, as the statute does not recognize any PAN jurisdiction for the reason that the specific jurisdictions as stands vested with an AO, viz., (i) territorial jurisdiction; (ii) persons or classes of persons jurisdiction; (iii)*

jurisdiction on the basis of income/classes of income i.e. pecuniary jurisdiction; and (iv) jurisdiction as per cases or classes of cases, are clearly spelt out in sub-s. (3) of s. 120 of the Act, therefore, we are not inclined to accept the aforesaid claim of the Department. We, thus, in terms of our aforesaid observations are unable to concur with the learned Departmental Representative that the ITO, Ward-1(2), Jabalpur was validly vested with the jurisdiction over the case of the assessee on the basis of allocation of his case on PAN data base. Our aforesaid view that an invalid jurisdiction assumed by the AO cannot be held to be correct by drawing support from PAN jurisdiction is supported by the order of the Tribunal, Delhi in the case of ITO vs. WS Builders (P) Ltd. (2018) 169 ITD 679 (Del) and that of the Tribunal, Kolkata in the case of Cosmat Traders (P) Ltd. (2021) 128 taxmann.com 174 (Kol).

24. *We, thus, in terms of our aforesaid observations concur with the contention advanced by the learned Authorised Representative that as the impugned assessment under s. 143(3), dt. 12th March, 2014 had been framed de hors any valid notice issued by the jurisdictional AO i.e., ITO, Ward-2(2), Bilaspur, therefore, the same cannot be sustained and is liable to be struck down on the said count itself. Accordingly, we quash the assessment framed by the ITO, Ward2(2), Bilaspur vide his order passed under s. 143(3), dt. 12th March, 2014 for want of valid assumption of jurisdiction on his part.*

14. Identical issue as that of the issue raised in the present case has been dealt with by the ITAT, "B" bench, Bangalore in the case of Shri Bangalore Narayan in IT(IT)A Nos. 120 & 121/Bangalore/2022 vide order dated 17.09.2023, wherein IT, Bangalore has decided the issue of validity of assessment u/s 143(3) by change in incumbent but without issuance of order u/s 127, following the guiding principle of law laid down by Hon'ble Apex Court in the case of CIT vs Hotel Blue Moon reported in (2010) 321 ITR 362 (S.C) wherein it is held that, issue of a legally valid notice u/s. 143(2) is mandatory for usurping jurisdiction to frame scrutiny assessment u/s. 143(3) of the Act and absence of a valid notice u/s 143(2) is not a curable

defect. The view taken in the case of Hotel Blue Moon (supra) was reiterated by Hon'ble Supreme Court in another case of CIT vs Laxman Das Khandelwal in (2019) 108 taxmann.com, the observations of the tribunal are extracted as under:

7.6. Admittedly, there was no notice issued by the ITO Ward 1(1) International taxation, had jurisdiction over the assessee and who completed the assessment. We have carefully considered the rival submissions. [Section 127](#) of the Act reads as follows:

"Power to transfer cases.

127. (1) The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him. (2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, --

(a) where the Principal Directors General or Directors General or Principal Chief Commissioners or] Chief Commissioners or Principal Commissioners or] Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) where the [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner as the Board may, by notification in the Official Gazette, authorize in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re- issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation.--In [section 120](#) and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year."

7.7. It can be seen from the provisions of Sec.127(4) of the Act that the necessity of re-issuing notice under [section 143\(2\)](#), by the transferee AO is not necessary, but on the date on which the notice under [section 143\(2\)](#) is issued by the transferor AO, he must have held a valid jurisdiction over the assessee. In the present facts of the case, case the notice u/s.143(2) of the Act was issued by the transferor AO on 28/09/2018, did not have jurisdiction over the assessee. Therefore, the provisions of Sec.127(4) of the Act cannot come to the rescue of revenue.

7.8. We find the Hon'ble Supreme Court in case of Hotel Blue Moon reported in 321 ITR 362, non-issue of notice u/s.143(2) by the AO who passed the assessment order renders the order of assessment proceedings a nullity. According to the revenue as per [section 127](#) of the Act, which deals with transfer of jurisdiction of a case specifically provides in sub-section (4) of [section 127](#) that there is no necessity to re-issue of any statutory notices already issued by the AO from whom the case is transferred.

7.9. This Tribunal has consistently held in plethora of cases that, on transferring the jurisdiction of the Assessee's case by an AO who had issued 143(2) notice, becomes, functus officio and the AO who subsequently frames the assessment order pursuant to transfer of case u/s.127 of the Act, has to mandatorily issue notice u/s 143(2) of the Act. This law has been held by Hon'ble Supreme Court in [CIT vs Hotel Blue Moon](#) reported in (2010) 321 ITR 362 (S.C). Hon'ble Supreme Court held that, issue of a legally valid notice u/s. 143(2) is mandatory for usurping jurisdiction to frame scrutiny assessment u/s. 143(3) of the Act and absence of a valid notice u/s 143(2) is not a curable defect. The view taken in the case of Hotel Blue Moon (supra) was reiterated by Hon'ble Supreme Court in another case of [CIT vs Laxman Das Khandelwal](#) in (2019) 108 taxmann.com

183. Hon'ble Supreme Court observed as under:

"5. At the outset, it must be stated that out of two questions of law that arose for consideration in Hotel Blue Moon's case the first question was whether notice under [Section 143\(2\)](#) would be mandatory for the purpose of making the assessment under [Section 143\(3\)](#) of the Act. It was observed:-

"3. The Appellate Tribunal held while affirming the decision of CIT (A) that non-issue of notice under [Section 143\(2\)](#) is only a procedural irregularity and the same is curable. In the appeal filed by the assessee before the Gauhati High Court, the following two questions of law were raised for consideration and decision of the High Court, they were:

"(1) Whether on the facts and in circumstances of the case the issuance of notice under [Section 143\(3\)](#) of the Income Tax Act, 1961 within the prescribed time-limit for the purpose of making the assessment under [Section 143\(3\)](#) of the Income Tax Act, 1961 is mandatory? And (2) Whether, on the facts and in the circumstances of the case and in view of the undisputed findings arrived at by the Commissioner of Income Tax (Appeals), the additions made under [Section 68](#) of the Income Tax Act, 1961 should be deleted or set aside?"

4. In said appeal arising from the decision of the Income Tax Appellate Tribunal ('the Tribunal', for short), the issue that arose before the High Court was the effect of absence of notice under [Section 143\(2\)](#) of the Income Tax Act, 1961 ('the Act', for short). The Respondent-Assessee relied upon the decision of this Court in Asstt. CIT v. Hotel Blue Moon [2010] 188 Taxman 113/321 ITR 362 (SC). On the other hand, reliance was placed by the Appellant on the provisions of [Section 292BB](#) of the Act to submit that the Respondent having participated in the proceedings, the defect, if any, stood completely cured.

5. At the outset, it must be stated that out of two questions of law that arose for consideration in Hotel Blue Moon's case (supra) the first question was whether notice under [Section 143\(2\)](#) would be mandatory for the purpose of making the assessment under [Section 143\(3\)](#) of the Act. It was observed: --

"3. The Appellate Tribunal held, while affirming the decision of CIT (A) that non-issue of notice under [Section 143\(2\)](#) is only a procedural irregularity and the same is curable. In the appeal filed by the assessee before the Gauhati High Court, the following two questions of law were raised for consideration and decision of the High Court, they were:

"(1) Whether on the facts and in circumstances of the case the issuance of notice under [Section 143\(3\)](#) of the Income Tax Act, 1961 within the prescribed time-limit for the purpose of making the assessment under [Section 143\(3\)](#) of the Income Tax Act, 1961 is mandatory? And (2) Whether, on the facts and in the circumstances of the case and in view of the undisputed findings arrived at by the Commissioner of Income Tax (Appeals), the additions made under [Section 68](#) of the Income Tax Act, 1961 should be deleted or set aside?"

4. The High Court, disagreeing with the Tribunal, held, that the provisions of [Section 142](#) and sub-sections (2) and (3) of [Section 143](#) will have mandatory application in a case where the assessing officer in repudiation of return filed in response to a notice issued under [Section 158-BC\(a\)](#) proceeds to make an inquiry. Accordingly, the High Court answered the question of law framed in affirmative and in favour of the appellant and against the Revenue. The Revenue thereafter applied to this Court for special leave under [Article 136](#), and the same was granted, and hence this appeal.

** ** *

13. The only question that arises for our consideration in this batch of appeals is: whether service of notice on the assessee under [Section 143\(2\)](#) within the prescribed period of time is a prerequisite for framing the block assessment under Chapter XIV-B of the Income Tax Act, 1961?

** ** *

27. The case of the Revenue is that the expression "so far as may be, apply" indicates that it is not expected to follow the provisions of [Section 142](#), sub-sections (2) and (3) of [Section 143](#) strictly for the purpose of block assessments. We do not agree with the submissions of the learned counsel for the Revenue, since we do not see any reason to restrict the scope and meaning of the expression "so far as may be, apply". In our view, where the assessing officer in repudiation of the return filed under [Section 158-BC\(a\)](#) proceeds to make an enquiry, he has necessarily to follow the provisions of [Section 142](#), sub-sections (2) and (3) of [Section 143](#)."

6. The question, however, remains whether [Section 292BB](#) which came into effect on and from 01.04.2008 has effected any change. Said [Section 292BB](#) is to the following effect: --

"292BB. Notice deemed to be valid in certain circumstances.-- Where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was –

- (a) Not served upon him; or
- (b) Not served upon him in time; or
- (c) Served upon him in an improper manner:

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment."

7. A closer look at [Section 292BB](#) shows that if the assessee has participated in the proceedings it shall be deemed that any notice which is required to be

served upon was duly served and the assessee would be precluded from taking any objections that the notice was (a) not served upon him; or (b) not served upon him in time; or (c) served upon him in an improper manner. According to Mr. Mahabir Singh, learned Senior Advocate, since the Respondent had participated in the proceedings, the provisions of [Section 292BB](#) would be a complete answer.

On the other hand, Mr. Ankit Vijaywargia, learned Advocate, appearing for the Respondent submitted that the notice under [Section 143\(2\)](#) of the Act was never issued which was evident from the orders passed on record as well as the stand taken by the Appellant in the memo of appeal. It was further submitted that issuance of notice under [Section 143\(2\)](#) of the Act being prerequisite, in the absence of such notice, the entire proceedings would be invalid.

8. The law on the point as regards applicability of the requirement of notice under [Section 143\(2\)](#) of the Act is quite clear from the decision in *Hotel Blue Moon's case* (supra). The issue that however needs to be considered is the impact of [Section 292BB](#) of the Act.

9. According to [Section 292BB](#) of the Act, if the assessee had participated in the proceedings, by way of legal fiction, notice would be deemed to be valid even if there be infractions as detailed in said Section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on part of the assessee. It is, however, to be noted that the Section does not save complete absence of notice. For [Section 292BB](#) to apply, the notice must have emanated from the department. It is only the infirmities in the manner of service of notice that the Section seeks to cure. The Section is not intended to cure complete absence of notice itself.

10. Since the facts on record are clear that no notice under [Section 143\(2\)](#) of the Act was ever issued by the Department, the findings rendered by the High Court and the Tribunal and the conclusion arrived at were correct.

We, therefore, see no reason to take a different view in the matter.

7.10. In the present case, admittedly no notice u/s.143(2) was issued by the AO who had jurisdiction over the assessee at all material point of time. The assessee filed return of income on 31/03/2018, under [section 139\(4\)](#). A notice u/s.143(2) of the Act, dated 24/09/2018 was issued by the ITO Ward 1(2)(1), who never had jurisdiction over the assessee. Thereafter, another notice u/s.143(2) dated 28/09/2018 was issued ITO Ward- 4(3)(4), who also did not have jurisdiction over the assessee. The case was transferred by ITO Ward 4(3)(4) on 24/06/2019 to ITO Ward-1(1), International Taxation who had jurisdiction over the assessee. The ITO Ward-1(1), International Taxation passed the assessment order dated 28/12/2019 was passed u/s.144 r.w. 147 of the Act.

7.11. In such circumstances, the decision of the Hon'ble Supreme Court in case of *CIT vs. Hotel Blow Moon* (Supra), and [CIT vs Laxman Das Khandelwal](#) will be clearly applicable to the facts of the present case. We also find that Hon'ble Supreme Court in a recent decision in case of [CIT vs. S.K. Industries](#) reported in (2022) 141 Taxmann.com 569 took identical view that,

where an assessing officer, passed assessment order under [section 143\(3\)](#), without issuing notice under [section 143\(2\)](#) and only in pursuance to notice issued by another assessing officer under [section 143\(2\)](#), who had no jurisdiction over the assessee at relevant time, such assessment order was liable to be set aside.

Accordingly, the additional grounds filed by assessee stands allowed.

15. Regarding issuance of notice u/s 143(2) by the non-jurisdictional AO, Ld. AR submitted before us the decision of Hon'ble Supreme Court in the case of ACIT Vs. S.K. Industries reported in 141 Taxmann.com 569, wherein Hon'ble Apex court has dismissed on account of no good ground and reasons to condone the delay in following of such SLP in the case of S.K. industries against the judgment of Hon'ble Delhi High Court reported in (2022) 141 Taxmann.com 568, on the issuance of notice u/s 143(2) of the Act by the non-jurisdictional AO, wherein Hon'ble Delhi High Court had held that issuance of a notice u/s 143(2)(a) of the Act by the jurisdictional AO within the prescribed time limit is mandatory, without which the assessment order passed following such proceedings in violation of provisions of section 143(2)(a) is liable to be set aside. The observations of the Hon'ble Delhi High Court in the case of S.K. industries (supra) are as under:

6. *Mr. Dileep Shivpuri, Senior Standing Counsel for the Revenue referred to reply filed in the present case and submitted that the case of the Petitioner was chosen by the departmental software, Computer Aided Scrutiny Selection, and that there was no human intervention involved in the selection. It is further stated that the Permanent Account Number (PAN) of the Petitioner fell within the jurisdiction of Respondent No. 2 and hence notice was sent by the Office of Respondent No. 2. He further referred to Section 124(3)(a) of the*

Act and contended that the Petitioner ought to have questioned the jurisdiction of Respondent No. 2 immediately after receiving the notice under section 143(2) of the Act.

7. *As far as the last submission is concerned, learned counsel for the Petitioner submits that it is only if the Petitioner had filed a return under section 139(1) of the Act with Respondent No. 2 would the question of Drawing the attention of Respondent No. 2 for delay in issuing a notice have arisen. Since the Petitioner is not obliged to file any return, the question of availing section 124(3)(a) of the Act did not arise.*

8. *Be that as it may, in the considered view of the Court, the AO having jurisdiction i.e., Respondent No. 1 ought to have issue a notice under section 143(2)(a) of the Act within the prescribed time limit i.e., 30th September 2014 in order to proceed with the assessment. Considering that a similar mistake of an AO not having jurisdiction over the Assessee issuing a notice to it had been committed earlier, there was no occasion for the Revenue to continue to repeat the same mistake and expect that it will be condoned.*

9. *The impugned assessment order dated 31st March 2016 is unsustainable in law since it has been passed without the AO having jurisdiction over the Assessee issuing notice to it under section 143(2)(a) within the prescribed time limit i.e., on or before 30th September 2014. The impugned assessment order dated 31st March 2016 is hereby set aside.*

16. As substantiated by the Ld AR, the contention that the assessment proceedings in absence of an order u/s 127 for change of incumbent embedded with no notice issued u/s 143(2) by jurisdictional AO, cannot be validated merely because the notice was issued earlier by an AO not having valid jurisdiction over the case of assessee. Violating mandatory procedural provision of the Act, which is prerequisite for framing an assessment u/s 143(3) rendered the entire assessment proceedings and the assessment order passed u/s 143(3) of the Act without jurisdiction and the same ought

to be quashed. Under the facts and circumstances of the present case we found substance in the contentions raised by the assessee under the additional grounds nos. 1, 2 and 3, therefore, respectfully following the decision of Hon'ble Supreme Court in the case of Hotel Blue moon, Lakshman Das Khandelwal and S.K. Industries (referred to Supra) which were followed by coordinate bench of ITAT as extracted in the foregoing Para's of the present order, we are of the considered view that the assessment order passed u/s 143(3) dated 29.12.2017 by the Income Tax Officer ward 1(4) without issuing any valid notice u/s 143(2) ought to have been illegal and unsustainable in the eyes of law. Accordingly, the assessment framed by the ITO Ward-1(4), u/s 143(3) dated 29.12.2017 was without valid assumption of jurisdiction, thus, the same is liable to be quashed, and we do so.

17. As the assessment framed by the AO has been quashed in terms of our observations herein above for want of valid assumption of jurisdiction, therefore, we refrain from adverting to adjudicating the other grounds which became academic in nature, as raised by the assessee in the present appeal as well as by way of application for raising additional grounds before us on the merits of issue as well as on account of legal issues.

18. Since we have decided the additional grounds raised by the assessee challenging the validity of jurisdiction of the Ld. AO in framing and passing the Assessment order u/s 143(3), without issuing a valid notice u/s

143(2), by quashing the said order in accordance with our aforesaid observations, the grounds of appeal raised by the department in ITA 76/RPR/2020 rendered academic, thus, the same are left open and, accordingly, the appeal of the department stands disposed off.

19. In the combined result, appeal of the assessee in ITA No. 94/RPR/20121 has been allowed, and appeal of the revenue in ITA No. 76/RPR/2020 stands dismissed, in terms of our aforesaid observations.

Order pronounced in the open court on 23/11/2023.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 23/11/2023

Vaibhav Shrivastav

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur

